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Supreme Court of the United States

OCTOBER TERM, 1959.

No. 343

STAMFORD TRANSIT COMPANY, *Petitioner*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 145

PETITION FOR WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT OF ERRORS.

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Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

STAMFORD TRANSIT COMPANY, *Petitioner*

vs.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 145

PETITION FOR WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT OF ERRORS.

Petitioner respectfully prays for the issuance of a Writ of Certiorari to review the judgment below.

Opinion of Connecticut Superior Court, Comley, J., unreported, filed September 10, 1958, (appended as Appendix "A").

Opinion of Connecticut Supreme Court of Errors, reported 146 Conn. 467, 152 A.2d 502, dated May 26, 1959, announced June 2, 1959, (appended as Appendix "B").

Motion for reargument filed June 12, 1959.
Denied June 24, 1959.

See: Connecticut General Statutes, Section 52-410, 411 on arbitration (appended as Appendix "C").

See: National Labor Relations Act, Title 29 USC Section 158.

See: Title 28 USC Section 344 (b) dealing with a ". . . right . . . claimed . . . under . . . statute of . . . the United States . . ."

A. QUESTION PRESENTED

THE EMPLOYER CLAIMS IT IS ENTITLED TO ARBITRATE A DISPUTE WITH THE UNION OVER:

A. EXCESSIVE AND DISCRIMINATORY INITIATION FEES AND

B. RATE OF CHECK-OFF OF THE SAME.

The questions of policy and law involved are of great and general importance:

1. Can a "dispute" as to whether or not there is an "arbitrable dispute" be arbitrated under a general arbitration clause?
2. May unions charge excessive and discriminatory fees?
3. May a union ignore restrictions in the National Labor Relations Act (preventing any employer from requiring an employee to join a union within thirty days after his employment) when the employer is a small company of which the National Labor Relations Board refuses to take jurdisdiction?
4. May a union ignore restrictions in the National Labor Relations Act (relating to "initiation fees uniformly required") when the employer is a small company of which the National Labor Relations Board refuses to take jurisdiction?
5. May a union require a check-off of initiation fees in excess of the rate stipulated in the agreement with the employer.

B. STATEMENT OF THE CASE

The plaintiff Stamford Transit Company attempts to give 24-hour taxi service with 17 taxicabs operating out of the railroad station in Stamford, Connecticut. This employer has a union shop contract with the defendant, International Brotherhood of Teamsters, Local #145. The contract (Article 19) provides:

"It is agreed that should any charge of violation of this agreement, or any charge of discrimination, or any other grievance or dispute, arise between the parties hereto, an attempt shall be made between the parties to settle such controversy amicably. In the event that such controversy cannot be settled amicably, the same shall be referred to an arbitration panel, one member to be selected by each party, who shall select a third. The decision of said Board shall be final and binding upon both parties."

The union increased its initiation fee from $50 to $75 and later from $75 to $100. It demanded payment from part time drivers who work only a few hours a day or a few days a week.

Disputes did arise.

The National Labor Relations Board did not then take jurisdiction of businesses with annual gross of less than $500,000. The employer was unable to get part time employees who would pay $75 to $100 initiation fee for a part time job. The employer and its customers suffered.

The employer requested, orally and in writing, arbitration of a number of questions, including the following:

1. *"Initiation fee payments should not exceed $5 per week".*

This was because the union demanded that the employer "deduct ten dollars a week" by check-off although the contract (Article 10) provided that check-off would not exceed $5 per week:

"Article Ten: The Employer agrees that, when properly authorized by the Union and the Employee, it will deduct from the wages of the Union member a sum equal to such employee's initiation fee, *not to exceed $5 per week*, and monthly dues to the Union, and remit the same to the Union, at such times as mutually agreed upon by both parties hereto". (emphasis supplied)

2. The employer also requested arbitration of the question of *"discrimination,"* because the union charged other members of the same local only a $5 initiation fee. This is contrary to the provisions of the National Labor Relations Act, Section 8 (b) (2), saying:

> "It shall be an unfair labor practice for a labor organization or its agents . . . to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees *uniformly required* as a condition of acquiring or retaining membership". (emphasis supplied).

3. The employer also requested arbitration of the question that *"initiation fee payments should not begin until after the employee has worked 30 days"* because the union demanded immediate payment contrary to the National Labor Relations Act which says, section 8 (a) (3):

> ". . . nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment . . ."

The union refused to arbitrate. Arbitration was demanded under the Connecticut statute (See Appendix "C") on November 15, 1957.

The Connecticut Superior Court refused arbitration saying: "It is obvious that what the plaintiff is seeking to arbitrate is the amount of the fees and dues which the defendant is seeking to impose upon its members. This is not within the scope of the contract between the plaintiff and the defendant".

Arguments to the Court related to all the above issues including the National Labor Relations Act and the same were covered in assignments of error.

The Connecticut Supreme Court of Errors affirmed saying: "The decisive question is whether there is an arbitrable issue between the parties which falls within the terms of the submission. The amount of the initiation fee and the dues charged to members of the union are ordinarily internal affairs of the union. The company does not claim that in authorizing a deduction of $10 a week the union is exceeding the provision of the contract which requires the plaintiff to deduct only $5. Its claim is, flatly, that the amount of the initiation fee and of the dues is excessive and discriminatory. While the contract contains broad provisions for the arbitration of grievances and disputes between the company and the union, the submission fails to set out any issue that is discriminatory against the plaintiff as distinguished from one which, it claims, is discriminatory against the members of the union whom it employs. The submission fails, therefore, to submit an arbitrable issue, and the arbitration of some other issue, such as that of discrimination against the company, would not be within the terms of the submission".

The court erred because there never was a "submission."

The defendant refused to arbitrate. There was only a demand by the employer to arbitrate, as quoted above, (1) that "initiation fee payments should not exceed $5 per week" and (2) the matter of "discriminatory" and "excessive" "initiation fees" and "dues" and (3) that check-off of "initiation fee payments should not begin until after the employee has worked 30 days," etc. Of course, the demand was drafted in the broadest appropriate manner in conformity with good arbitration practice.

C. REASONS FOR THE ALLOWANCE OF THE WRIT

1. It is sound public policy to permit disputing parties to arbitrate disputes between themselves, particularly in the case of labor disputes and even in the case of a dispute as to whether or not there is an "arbitrable dispute."

2. It is particularly necessary to permit a small company, which cannot avail itself of the services of the National Labor Relations Board, to go to arbitration in a matter where the federal law applies.

3. Union initiation fees and dues are not a matter strictly between the employee and the union (a) when the employer is obligated to make its employees join the union and (b) when the employer is obligated to collect dues and initiation fees for the union by check-off and (c) when the contract between the employer and the union strictly limits the employer's obligation of check-off.

4. The question of the "arbitrability" of a matter is determined by the expressed intent of the parties to the arbitration agreement. A favorite delaying tactic of anyone opposing arbitration is to seek court resolution of this question *before* arbitration. This should be a matter for the arbitrator, subject to later court review ("Arbitrability and the Arbitrator's Jurisdiction", 37 LRRM 50; Post Pub. Co. v. Cort, LRRM 2198; West's Decennial Digests, Labor Relations, sec. 434, digesting many cases).

WHEREFORE, the petitioner prays for the allowance of a writ of certiorari to the Supreme Court of Errors of the State of Connecticut in the case entitled "Stamford Transit Company v. International Brotherhood of Teamsters, Local 145, No. 4721", in order that said case may be reviewed and determined by this Honorable Court.

STAMFORD TRANSIT COMPANY

by ROBERT C. BELL, JR.
Counsel for Petitioner

Robert C. Bell

APPENDIX "A"

NO. 104758

STAMFORD TRANSIT COMPANY	)	SUPERIOR COURT
VS.	)	FAIRFIELD COUNTY
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL #145	)	AT BRIDGEPORT
	)	SEPTEMBER 8, 1959

MEMORANDUM OF DECISION

Although there is much discussion and considerable difference of opinion, both judicial and legislative, as to the jurisdiction of the state courts to entertain arbitration proceedings arising out of labor contracts, the question in Connecticut would appear to have been settled by the recent case of *Gilden v. The Singer Manufacturing Company*, 145 Conn. 117 wherein such jurisdiction was not only recognized but an individual employee was given the right to compel arbitration.

The real question in the present case is whether the matters as to which the plaintiff seeks arbitration are within the scope of Article Ten of the contract which provides as follows: "The Employer agrees that, when property authorized by the Union and the Employee, it will deduct from the wages of the Union member a sum equal to such employee's initiation fee, not to exceed $5.00 per week, and monthly dues to the Union, and remit the same to the Union, at such times as mutually agreed upon by both parties hereto".

The plaintiff's demand for arbitration is set forth in a letter to the defendant (Exhibit A) dated November 6, 1957 and specifies eight different matters to be submitted to the arbitrators, vis.,

"1. Union initiation fees are discriminatory.
2. Union initiation fees are excessive.
3. Union dues are discriminatory.
4. Union dues are excessive.
5. Union initiation fees should not be more than $5.00.
6. Union dues should not be more than charged to other members of local #145 similarly situated.
7. Initiation fee payments should not exceed $5.00 per week.
8. Initiation fee payments should not begin until after the employee has worked 30 days."

It cannot fairly be said that any of these eight matters come within the purview of Article Ten or of any other provision of the contract. It might conceivably be argued that the defendant may not require the plaintiff to deduct more than $5.00 per week from wages for initiation fees and monthly dues but this is not specified as a matter for arbitration even in No. 7. It is obvious that what the plaintiff is seeking to arbitrate is the amount of the fees and dues which the defendant is seeking to impose upon its members. This is not within the scope of the contract between the plaintiff and the defendant.

Judgment is rendered for the defendant.

COMLEY

.....J.

Filed Sept. 10, 1958
Unreported case.

APPENDIX "B"
SUPREME COURT OF ERRORS
April Term, 1959

STAMFORD TRANSIT COMPANY *vs.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 145,

146 Conn. 467, 152 A.2d 502, Date of Supreme Court Judgment, May 26, 1959, decision announced June 2, 1959. Motion to reargue filed June 12, 1959, denied June 24, 1959.

Application for an order directing the defendant to proceed with arbitration, brought to the Superior Court in Fairfield County and tried to the court, *Comley, J.*; judgment for the defendant and appeal by the plaintiff. *No error.*

Robert C. Bell, Jr., for the appellant (plaintiff).

John A. Arcudi, for the appellee (defendant).

MURPHY, J. The plaintiff operates a taxicab business in Stamford. In 1952, it entered into a collective bargaining agreement with the defendant union. Under the contract, all employees of the plaintiff are required to be union members, and new employees must join after thirty days of employment. The con-

tract also provides that the company shall, when properly authorized by the union and the employee, deduct the union initiation fee, in an amount not in excees of of $5 per week, and the monthly dues and remit both to the union at such times as both parties mutually agree. Article 19 of the contract provides for arbitration of grievances and disputes between the parties and of charges of discrimination. In 1956, the union increased some of the initiation fees to $75 and submitted authorization cards for deduction of $10 weekly to cover this fee. The company claims that the initiation fee and the dues charged its employees are excessive and discriminatory. By its submission, it sought to have these matters arbitrated and, when the union refused, applied to the Superior Court for an order directing the union to proceed with arbitration. Rev. 1958, § 52-410. The court determined that what the plaintiff was seeking to arbitrate was the amount of the initiation fee and the dues and that they were not within the scope of the contract. Judgment was rendered for the defendant, and the plaintiff has appealed.

The decisive question is whether there is an arbitrable issue between the parties which falls within the terms of the submission. The amount of the initiation fee and the dues charged to members of the union are ordinarily internal affairs of the union. The company does not claim that in authorizing a deduction of $10 a week the union is exceeding the provision of the contract which requires the plaintiff to deduct only $5. Its claim is, flatly, that the amount of the initiation fee and of the dues is excessive and discriminatory. While the contract contains broad provisions for the arbitration of grievances and disputes between the company and the union, the submission fails to set out any issue that is discriminatory against the plaintiff as distinguished from one which, it claims, is discriminatory against the members of the union whom it employs. The submission fails, therefore, to submit an arbitrable issue, and the arbitration of some other issue, such as that of discrimination against the company, would not be within the terms of the submission. *Local 63, Textile Workers Union* vs. *Cheney Bros.*, 141 Conn. 606, 613, 109 A.2d 240.

In this opinion the other judges concurred.

APPENDIX "C"

GENERAL STATUTES OF CONNECTICUT, REVISION OF 1958

Sec. 52-410. *Application to Superior Court.* A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the Superior Court for the county in which one of the parties resides or, in a controversy concerning land, for the county in which the land is situated or, when said court is not in session, to any judge thereof, for an order directing the parties to proceed with the arbitration in compliance with their agreement. Such application shall be by writ of summons and complaint, served in the manner provided by law. Such complaint may be in the following form: "1. On , 19 , the plaintiff and the defendant entered into a written agreement for arbitration, of which exhibit A, hereto attached, is a copy. 2. The defendant has neglected and refused to perform said agreement for arbitration, although the plaintiff is ready and willing to perform the same. The plaintiff claims an order directing the defendant to proceed with an arbitration in compliance therewith." The parties shall be considered as at issue on the allegations of the complaint unless the defendant files answer thereto within five days from the return day, and the court or judge shall hear the matter either at a short calendar session, or as a privileged case, or otherwise, in order to dispose of the case with the least possible delay, and shall either grant the order or deny the same, according to the rights of the parties (1949 Rev., S. 8153).

Sec. 52-411. *Arbitrator or Umpire.* If, in a written agreement to arbitrate, a method of appointing an arbitrator or arbitrators or an umpire has been provided, such method shall be followed; but, if no method is provided therein, or if a method is provided and any party thereto fails to avail himself of such method, or if for any reason there is a failure in the naming of an arbitrator or arbitrators or an umpire, or, in case of death, inability or refusal to serve of any arbitrator or umpire, upon application by a party to the arbitration agreement, the Superior Court for the county in which one of the parties

resides or, in a controversy concerning land, for the county in which the land is situated or, when said court is not session, any judge thereof, shall appoint an arbitrator or arbitrators or an umpire, as the case may require. A person so appointed shall act under any such agreement with the same force and effect as if he had been specifically named or referred to therein; and, unless otherwise provided in the agreement, the arbitration shall be by a single arbitrator. An application under this section and the proceedings thereon shall conform to the application and proceedings provided for in section 52-410, except that such changes shall be made in the complaint as may be necessary to correctly and concisely state the plaintiff's claim.

(1949 Rev., S. 8154.)